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NOTIFICATION

No. 3425|57|Law(B4).

Dated, Trivandrum, the 25th April, 1958.

The following Act of the Kerala State Legislature is hereby published for general information. The Bill as passed by the Legislative Assembly received the assent of the President on the 20th April, 1958.

By order of the Governor,

P. D. THOMMEN,
Law Secretary.

ACT 26 of 1958

THE MADRAS MARUMAKKATTAYAM (AMENDMENT) ACT, 1958

An Act further to amend the Madras Marumakkattayam Act, 1932.

Preamble.—WHEREAS it is necessary and expedient further to amend the Madras Marumakkattayam Act, 1932 (Madras Act XXII of 1933), in its application to the Malabar District referred to in sub-section (2) of section 5 of the States Reorganisation Act, 1956, for the purposes hereinafter appearing;

BE it enacted in the Ninth Year of the Republic of India as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Madras Marumakkattayam (Amendment) Act, 1958.

(2) It shall come into force at once.

2. *Amendment of section 3.*—In section 3 of the Madras Marumakkattayam Act, 1932 (Madras Act XXII of 1933), hereinafter referred to as the principal Act, clause (b), shall be omitted.

3. *Insertion of sections 10-A, 10-B and 10-C.*—After section 10 of the principal Act, the following sections shall be inserted, namely:—

"10-A. *Maintenance Pendente Lite and Expenses of proceedings.*—Where in any proceeding under this Chapter it appears to the Court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the Court to be reasonable.

10-B. *Permanent alimony and maintenance.*—(1) Any Court exercising jurisdiction under this Chapter may on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall, while the applicant remains unmarried, pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant and the conduct of the parties, it may seem to the Court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.

(2) If the Court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may, at the instance of either party, vary, modify or rescind any such order in such manner as the Court may deem just.

(3) If the Court is satisfied that the party in whose favour an order has been made under this section has remarried or has been leading a life of immorality it shall rescind the order.

10-C. *Enforcement of and appeal from orders.*—All orders made by the Court in any proceeding under section 10-A or section 10-B shall be enforced in like manner as a decree of the Court made in the exercise of the original civil jurisdiction is enforced, and may be appealed from under any law for the time being in force:

Provided that there shall be no appeal on the subject of costs only.".

4. *Amendment of section 14.*—In section 14 of the principal Act, the second proviso shall be omitted.

5. *Amendment of section 32.*—Section 32 of the principal Act shall be re-numbered as sub-section (1) of that section

and after sub-section (1) as so re-numbered, the following shall be inserted as sub-section (2), namely:—

"(2) If the accounts are not made available for inspection as provided for in sub-section (1), the Munsiff's Court having jurisdiction over the place where the tarwad house is situated may, on application by any major anandravan, and after notice to the karnavan, pass an order causing the accounts to be produced in Court and allowing the anandravan to inspect, or to take copies of, or extracts from, such accounts. Such order of the Court shall be enforced in like manner as the orders of the Court made in the exercise of its original civil jurisdiction are enforced and may be appealed from under any law for the time being in force.".

6. *Substitution of new section for section 33.*—For section 33 of the principal Act, the following section shall be substituted, namely:—

"33. *Sales, mortgages and leases.*—(1) No sale or mortgage of any immovable property of a tarwad and no lease of any such property shall be valid, unless it is executed by the Karnavan for consideration, for tarwad necessity or benefit, and with the written consent of the majority of the major members of the tarwad.

(2) Nothing contained in sub-section (1) shall be deemed to affect the validity of any mortgage or lease executed before the commencement of the Madras Marumakkattayam (Amendment) Act, 1958, in accordance with the law in force at the time of such execution.".

7. *Substitution of new section for section 34.*—For section 34 of the principal Act, the following section shall be substituted, namely:—

"34. *Debt contracted and transaction entered into by karnavan when binding on tarwad.*—No debt contracted or other transaction not falling under section 33 entered into by a karnavan shall bind the tarwad unless the debt is contracted or the transaction is entered into for consideration and for tarwad necessity or benefit.".

8. *Insertion of new section 34A.*—After section 34 of the principal Act, the following section shall be inserted, namely:—

"34-A. *Burden of proving tarwad necessity.*—The burden of proving tarwad necessity or benefit shall be on the purchaser, mortgagee, pledgee, or other alience, or creditor, as the case may be. But the Court may presume such necessity where the majority of the major members of the tarwad are parties to or have given their written consent to the transaction.".

9. *Substitution of new section for section 38.*—For section 38 of the principal Act, the following section shall be substituted, namely:—

"38. *Right of member of tarwad or tavazhi to claim partition.*—Any member of a tarwad or tavazhi may claim to take his or her share of all the properties of the tarwad or tavazhi over which the tarwad or tavazhi has power of disposal, and separate from the tarwad or tavazhi.

Explanation 1.—Nothing in this section shall be a bar for two or more members belonging to the same tarwad or tavazhi claiming their shares of the properties and enjoying the same jointly with all the incidents of tarwad property.

Explanation 2.—The member or members who claim partition under this section or the member who claims or is compelled to take his or her share under section 39 shall be entitled to such share or shares of the tarwad or tavazhi properties as would fall to such member or members, if a division *per capita* were made among the members of the tarwad or tavazhi then living.

Explanation 3.—The provisions of this section shall apply to a tarwad notwithstanding the fact that immediately before the commencement of the Madras Marumakkattayam (Amendment) Act, 1958, the tarwad was included in the Schedule or that the tarwad had been registered as impartible.

Explanation 4.—The provisions of this section shall apply to all suits for partition, appeals and other proceedings arising therefrom filed or proceeded with by members or their legal representatives and pending in the Courts immediately before the commencement of the Madras Marumakkattayam (Amendment) Act, 1958, and such suits, appeals and other proceedings shall be disposed of in accordance with the provisions of this section as if this section were in force at the time of the institution of such suits, appeals or other proceedings.".

10. *Substitution of new section for section 39.*—For section 39 of the principal Act, the following section shall be substituted, namely:—

"39. *Partition on change of religion.*—Any member of a tarwad or tavazhi who has changed his or her religion may claim or be compelled by any other member of the tarwad or tavazhi, to take his or her share of all the tarwad or tavazhi properties over which the tarwad or tavazhi has power of disposal and separate from the tarwad or tavazhi.".

11. *Omission of sections 40 and 41.*—Sections 40 and 41 of the principal Act shall be omitted.

12. *Omission of Chapter VII and the Schedule.*—The headings "Chapter VII" and "Impartible Tarwads" occurring before section 42, and sections 42 to 47 of, and the Schedule to, the principal Act shall be omitted.

13. *Amendment of section 49.*—In sub-section (2) of section 49 of the principal Act, clause (b), the brackets and letter "(a)" at the beginning and the word "and" at the end of clause (a) shall be omitted.

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